

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE

August 4, 2006

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Westin Hotel, San Francisco Airport, on August 4, 2006. Attendance was as follows:

MEMBERS PRESENT:

Christopher A. Delfino*
Matthew R. Gemello
Steven R. Harmon
Nina L. Hong*
Peter Heinecke
Barbara Matthews
Stewart Laughlin McDowell
Michael A. Occhiolini*
David M. Serepca
Jennifer Lynn Sostrin
Steven B. Stokdyk
James J. Thompson
Suzanne L. Weakley
Brian M. Wong
Russell J. Wood

MEMBERS ABSENT:

Curt C. Barwick
Nelson D. Crandall
Clint Davis
Bruce R. Deming
Victor Hsu
Brian A. Lebrecht
Deborah J. Ruosch
William R. Sawyers
Lemoine Skinner, III

LIAISONS AND GUESTS PRESENT:

Steve Hazen, Executive Committee*
Larry Doyle, State Bar of California, Office of Government Affairs*
Andrew Petillon, Securities and Exchange Commission*
Timothy LeBas, Department of Corporations*

*Via telephone

These minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chair Matthew Gemello at 9:30 a.m. He thanked the members of the Committee in attendance and noted that a quorum was present.
2. Approval of Minutes: The minutes for the May, June and July, 2006 meetings were approved in the form circulated (with minor corrections).

II. AGENCY AND LIAISONS' REPORTS

1. Securities and Exchange Commission: Andrew Petillon reported that the new SEC chairman, Christopher Cox, has been sworn in. The SEC has unanimously adopted new rules concerning disclosure of executive compensation, with a December 15, 2006 effective date. The new rules will be posted shortly at the SEC website.
2. National Association of Securities Dealers: No report; the Committee has no NASD liaison at present. It was agreed that the NASD would be asked to designate a new liaison to the Committee.
3. Department of Corporations: Tim LeBas reported that the Department of Corporations will help the Committee support the State Bar Business Law Section's Corporate Disclosure Act proposal. The proposal has been approved by the State Bar and presented to Larry Doyle, who is now seeking a sponsor. Tim LeBas also reported that the Department of Corporations is opposing SB 1207 (the majority vote proposal) as a regulator, based on its belief that the legislation is premature. The Department prefers to wait and see what Delaware's experience is. The Governor's office will also oppose. Tim LeBas further reported that his office is inviting comments on three topics, as potential subjects for future Departmental action: (i) stock option guidelines first proposed in 1999, based on the I.R.C. guidelines; (ii) guidelines for mortgage loan pools, particularly the investor suitability requirements; and (iii) "quasi-registration" of finders. Committee members interested in commenting on one or more of these topics should visit the Department's website for further information.
4. Secretary of State: No report; no liaison present.
5. ADR Committee: No report; no liaison present.
6. Corporate Law Departments Committee: Steve Harmon reported that Alan Gutterman has been designated to serve as the new chair of the Corporate Law Departments (CLD) Committee, in an effort to stabilize CLD Committee leadership. The CLD Committee remains very eager to coordinate with the Corporations Committee on upcoming teleseminars and other events of common interest.
7. Cyberlaw Committee: Russ Wood reported that the Cyberlaw Committee had not met since the last Corporations Committee meeting.
8. Financial Institutions Committee: Michael Occhiolini reported that the Financial Institutions Committee is looking at several issues, including the junk fax prevention law,

authentication requirements for Internet banking, and credit union conversions to bank structures.

9. Non-Profit Corporations Committee: No report; no liaison present.
10. Partnerships and LLCs Committee: No report; no liaison present.
11. Executive Committee: Steve Hazen reported that the Executive Committee has nearly completed its review of the Handbook, and will issue its report shortly. He solicited items for the Business Law Section E-News. He also urged members planning to attend the State Bar annual convention to make their hotel reservations and to attend the Business Law Section breakfast.

III. SUBCOMMITTEE REPORTS

1. Legislation:
 - a. SB 1183 Amendment. Chris Delfino reported that this measure has been signed into law. It conforms Corp C §191 to the LLC provisions that list a number of factors that do not constitute transacting intrastate business. In addition, the sunset provision concerning supermajority voting in Corp C §710 has been removed.
 - b. ALP re Close Corporations. The Committee unanimously approved the draft ALP presented for discussion at the meeting (with minor corrections to be made by David Serepca). David will transmit the final draft ALP to Neil Wertlieb for Executive Committee approval and to Larry Doyle.
 - c. ALP re Section 800. David Serepca agreed to draft an ALP to amend Section 800 to raise the amount of the bond that the defendant in a shareholder derivative action may require the plaintiffs to post from \$50,000 to, *e.g.*, \$200,000 and to lessen the statutory standard to conform with standards in other statutes for posting bonds. The \$50,000 amount was set in 1983 and has not been changed since then; the standard currently is “no reasonable possibility of success on the merits,” which is unique.
 - d. ALP re Section 1800(a). Bruce Deming will draft an ALP to amend Section 1800, concerning involuntary dissolution actions, to codify the Klein Hawks case holding regarding equity analysis.
 - e. ALP re Section 204. Russ Wood agreed to follow up with this proposal for weighted director voting, comparable to Delaware Code Section 141. There has been discussion that the change should be made in the 300-series of Sections rather than in Section 204.
 - f. Opposition to SB 1207. Lisa Hammond, Chief of CalPERS Governmental Affairs Office, joined the Committee meeting in person for discussion of the Committee’s opposition to SB 1207. In addition, Marte Castanos, CalPERS legal counsel, was present by telephone for part of the discussion. According to CalPERS research, a significant majority of listed California corporations still have cumulative voting. The Committee continues to oppose SB 1207 on two main grounds: (i) that majority voting undermines cumulative voting, therefore majority voting should be

permitted only if a corporation opts out of cumulative voting, and (ii) that an opt-in to majority voting should require amendment of the articles (like cumulative voting) and should not be capable of being implemented simply by an amendment to the by-laws. There was lively discussion of these issues. The Committee authorized the SB 1207 Subcommittee to continue to work with CalPERS on the issues. Stewart McDowell will provide CalPERS with another copy of the statutory language that the Committee finds acceptable. If and when CalPERS circulates an amendment to SB 1207, she will circulate it to Committee members asking Committee members to vote on whether the Committee should withdraw its opposition based on the amended SB 1207. Matthew Gemello agrees to call Timothy LeBas to brief him on the outcome of the discussion.

2. Communications/Website: Jennifer Sostrin reported that she will be working with the State Bar website representative to restructure the Committee's website, including the addition of an online private "Committee Workroom" to replace the Fulbright & Jaworski extranet.
3. Education/Publications:
 - a. Seminars. Suzanne Weakley reported that she will propose two MCLE programs by the September 1st deadline for presentation at the January, 2007 State Bar Section Education Institute, to be held at the Claremont Hotel in Berkeley: (i) Introduction to Securities Law, to be presented by David Serepca and Steve Stokdyk; and (ii) a program on gender bias, to be presented by Teri Shugart.
 - b. Handbook for Incorporating a Business in California. Matthew Gemello reported that he has been working with Carol Lucas and that all but one issue has been resolved. He is having an employment law expert at his law firm review the employment material in the Handbook, and once that task is complete, the Executive Committee is expected to approve the Handbook for publication.
 - c. Potential Article. Suzanne Weakley has obtained a CD of Keith Bishop's teleseminar on shareholder voting, and Matthew Gemello's law firm is transcribing it. Once the transcription is available, Suzanne will review it to evaluate how much work would be required to turn it into a publishable article.
4. Litigation. No report.

IV. ONGOING PROJECTS

None reported.

V. NEW COMMITTEE OFFICERS

Matthew Gemello and Steven Stokdyk reported that the incoming Committee officers for the 2006-2007 year, effective as of the November, 2006 meeting, will be:

Bruce R. Deming and Russell J. Wood, Co-Chairs

Christopher A. Delfino, Vice-Chair, Communications/Website

Nina L. Hong, Vice-Chair, Education

Steven R. Harmon, Vice-Chair, Legislation

Jennifer Lynn Sostrin, Secretary

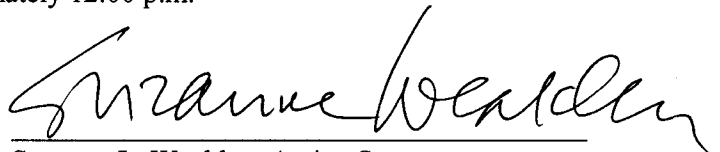
VI. NEXT COMMITTEE MEETING

It was agreed that, pending confirmation of the availability of the hotel, the September Committee meeting would be changed from September 1 to September 8, to avoid conflict with the Labor Day weekend.

VII. NEW BUSINESS

There was no new business not otherwise discussed in context above.

The meeting was adjourned at approximately 12:00 p.m.


Suzanne L. Weakley, Acting Secretary